



# City of Virginia Beach

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January 18, 2012

The Honorable William D. Sessoms, Jr., Mayor  
Members of City Council

**Subject: Oceanfront Lifeguard Services Policy Report**

Dear Mayor and Council Members:

As you know, the most recent five-year Oceanfront Lifeguard Services contract expired in October 2011. On August 16, 2011, the Department of Emergency Medical Services sought policy guidance on how to proceed with selecting the City's lifeguard services for the future. Council directed staff to execute a request for proposal (RFP) and concurrently prepare a best governmental estimate. Staff would then evaluate the responsiveness of the vendor proposal and costs compared to the government estimate.

Only one company, Virginia Beach Lifesaving (VBLS), responded to the RFP. The City's estimate was prepared prior to the bid opening for comparison. There is a significant price difference between the two. Both VBLS and the City are highly qualified and capable of delivering the lifeguard services at the Oceanfront.

Attached is the Oceanfront Lifeguard Services Policy Report. This report outlines the issues and considerations associated with selecting either a private contractor or expanding our existing EMS lifeguard program. We look forward to your consideration and direction.

With Pride in Our City,



James K. Spore  
City Manager

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Attachment



# Policy Report

## OCEANFRONT LIFEGUARD SERVICES

### BACKGROUND

Since 1929, the City of Virginia Beach has relied on private contractors to provide lifeguard services on the Resort Area, Croatan, and 57<sup>th</sup> Street Beaches. The City specifies standards of service to be provided by the contractor. These standards include minimum requirements for staffing, training, and equipment including licensure as an EMS agency. The contract with the current vendor, Virginia Beach Lifesaving Service (VBLS), expired October 31, 2011.

Over the last decade, lifeguarding services have changed across the country. Lifeguards are now expected to be full partners in public safety response; equipped with the latest training and technology. They are partners in public education and community marketing. The higher standards have led most communities to shift from a contracted to a public delivery model. No major West Coast beach community utilizes private contractors. Virginia Beach and Myrtle Beach are the only remaining major east coast beach destinations served by contractors. Ocean City, Atlantic City, Jacksonville Beach, and Daytona Beach have all developed municipal programs.

On August 16, 2011, the Department of Emergency Medical Services (VBEMS) sought public policy guidance on how to proceed with selecting the City's Oceanfront Lifeguard Services for the future. Council directed City staff to execute a request for proposal (RFP) process and concurrently prepare a best governmental estimate (BGE). Staff would then evaluate responsiveness of the vendor proposal and costs compared to BGE. VBLS was the only private vendor to submit a bid. Its bid for 2012 was \$1,445,000, which includes \$50,000 in one-time start up costs, with 2% annual increases over the remaining four years of a five-year contract. The estimate for a comparable municipal service is \$1,210,586 for the 2012 season, which includes \$100,176 in one-time start up costs. The VBEMS proposal did not identify any cost increases over the five year term. Before any adjustments are made, the VBEMS proposal is \$1,657,410 less than the VBLS proposal over the five year period. As will be discussed in more detail below, this five year differential is reduced to \$1,262,467 when allowance is made for potential VBEMS cost increases, indirect costs and diminished revenue streams.

### CONSIDERATIONS

While citizens and visitors alike have been well served by the current lifeguard agreement, contractual arrangements offer limited room for growth or flexibility. Fixed escalation costs must be fully funded even in the face of economic and budgetary downturns. Any emerging changes in service requirements (i.e. expanded hours or beach areas) can only be supported if the contractor is willing to negotiate a change. On the other hand, municipal resources can

be reallocated or modified based on emergent requirements and competing community needs.

VBLS has a long history of providing ocean lifeguard services to the community. They have a good management team and have provided effective water rescue and basic life support (BLS) services over the most recent seven year contract.

VBEMS also has a long history of emergency medical and marine rescue services. The department answers 39,000 calls annually providing advanced life support (ALS) care citywide. EMS has, for many years, served as the contract administrator for the oceanfront lifeguard services, requiring that the responsible officers be familiar with all aspects of lifeguarding and emergency beach response. VBEMS operates a volunteer marine rescue team with over a combined 100 years of experience answering all types of water emergencies from the Chesapeake Bay to Back Bay. VBEMS has resort lifeguarding experience and has supplemented the VBLS service in the past by operating lifeguard stands on the resort beaches during evening hours, which has proven to be the most crucial time for drowning occurrences. For the past two years EMS has provided full-time lifeguard services with experienced guards and supervisors on 14 stands and roving patrols covering all Sandbridge beaches.

Experience in Sandbridge has demonstrated that both VBEMS and VBLS draw on the same labor pool for lifeguards and first line supervisors. The average rank and file employee is looking for a job on the beach and to be treated well in the work place. Public vs. private employment is not a factor. Senior managers are typically affiliated only with their particular agency.

**Issue I: The City has limited control over the daily operations of a contracted lifeguard service.**

The City does not have the ability to direct the activities of individual lifeguards or job tasks. The only required training is that which is specified in the contract. Should a special need be identified (e.g. providing message points to visitors about swimming after hours), the City must first receive the concurrence of the contractor before the lifeguards can be assigned the new duties. Meetings and exchange of correspondence between staff and contractor often delay the process. Likewise, citizen concerns can only be referred to the lifeguard agency. The City has very little input in the resolution of complaints, even though most beachgoers perceive the lifeguards as a City representatives.

The contracting of a public safety service raises concerns of performance and accountability. It is often difficult to integrate a commercial vendor into the defined authority and response roles that our City has in place for its 3 public safety agencies. This has proved to be the case over the span of the last contract period.

With the exception of Myrtle Beach, ocean lifeguard services in every other major city on the east coast and all major cities and towns on the west coast are provided by state or municipal public safety agencies. Accountability and public safety system integration are major factors for municipal based lifeguard services. The fact that governments do not operate for profit allows governments to provide lifeguard and other public safety services at a lower cost than private providers and facilitates a higher degree of flexibility in daily operations.

**Issue II: The City and VBLS have offered different levels of service in their estimate/bid.**

Both VBEMS and VBLS provide comparable equipment for rescue and first response care. VBEMS has offered enhanced services to include a surf rescue boat as part of its operation and can do so as an enhancement utilizing current human resources and VBEMS equipment. VBEMS will provide advanced life support (ALS) response while VBLS will provide basic life support (BLS) care.

VBEMS can more readily adapt to the demand of entertainment events as well as natural storm events at the beach by drawing on inherent City resources by order of the City manager versus entering into emergency contract negotiations.

**Issue III: The management teams of both groups offer a wealth of experience.**

The leaders of VBLS have a wealth of experience operating a lifeguard service on the oceanfront beaches. Their professionalism and capability is unquestioned. Likewise, VBEMS officers have been providing public safety and marine rescue leadership for many years. The success in providing lifeguards at Sandbridge suggests that the City has the ability to manage and operate a large lifeguard service.

**Issue IV: There is a significant difference in costs between a municipal service and the RFP bid.**

VBEMS has proposed a first year cost of \$1,210,586, including start up. VBLS has proposed a first year cost of \$1,445,000, including their startup needs. The first year bid is a 16% variance from the City's estimate for the 2012 Season. For the following years, a VBLS contract will require a 2% annual escalation. The City estimate relies on the annual budget process to drive future funding availability, so projecting future City escalations is somewhat problematic. For sake of comparison, applying the same 2% escalation to the City operation still provides a lower estimated cost of \$1,430,841 over the life of the five-year contract.

EMS / VBLS Lifeguard Services Cost Analysis				
	EMS	VBLS	\$ Variance	% Variance
Year 1	\$ 1,210,586.00	\$ 1,445,000.00	\$ 234,414.00	16%
Year 2	1,132,618.38	1,422,900.00	290,281.62	20%
Year 3	1,155,270.75	1,451,358.00	296,087.25	20%
Year 4	1,178,376.17	1,480,385.00	302,008.83	20%
Year 5	1,201,943.69	1,509,993.00	308,049.31	20%
Five Year Cumulative Total	\$ 5,878,794.99	\$ 7,309,636.00	\$ 1,430,841.01	20%
- EMS amount adjusted to assume 2% annual increase				
- VBLS figures already reflect a 2% annual increase				

Even accounting for additional indirect costs, including liability insurance and worker's compensation coverage increases as well as the cost of the contractor's performance bond and the loss of BPOL and personal property tax revenues directly associated with the private contract, there is still a \$1.2 M or 17% variance over the life of the contract as shown below:

### **EMS / VBLS Lifeguard Services Cost Analysis**

	<b>EMS</b>	<b>VBLS</b>	<b>\$ Variance</b>	<b>% Variance</b>
Year 1	\$ 1,244,180	\$ 1,445,000	\$ 200,820	14%
Year 2	1,166,233	1,422,900	256,667	18%
Year 3	1,188,887	1,451,358	262,471	18%
Year 4	1,212,097	1,480,385	268,288	18%
Year 5	1,235,772	1,509,993	274,221	18%
Five Year Cumulative Total	6,047,169	7,309,636	\$ 1,262,467	17%

Above amounts factor in the following:

- EMS amount adjusted to assume 2% annual increase
- Workers Compensation Risk Factor of \$7,500 per year
- City Purchase of Liability Insurance of \$2M million per year approximately \$10k per year
- Loss of BPOL and Business Property Tax revenue attributable to private contract \$30,776

### **OPERATIONAL/MAINTENANCE**

Current practice for the Resort Area is to execute a contract with a private vendor. Over the life of the agreement, an officer from VBEMS interacts with the vendor and ensures contract compliance. In the event adjustments are needed, discussions are held at this level with the involvement of the Chief of EMS, as necessary. Areas of coverage are defined by date and time. Once the contracted lifeguards go off duty, the City assumes responsibility for water rescue response. VBLS has offered a proposal which continues this practice.

The proposed municipal service would provide lifeguards and related services on the beach at or above the standards set forth in the recent RFP. VBEMS will integrate existing City resources and capabilities to the greatest extent possible to maximize efficiencies.

### **ORGANIZATIONAL**

The Chief of EMS is the process manager for beach safety issues. VBEMS and the volunteer rescue squads have been involved with water safety education and emergency response for nearly 60 years. An EMS Division Chief is responsible for administering the lifeguard services contract as one of his job functions.

VBLS has the corporate organization in place to provide lifeguards on the beach. Any additional equipment offered in their proposal can be procured in time for the summer season.

VBEMS has the infrastructure in place to expand its existing Sandbridge operation to cover the Resort area. Logistics support and training will be provided by existing staff. Two full-time officers will be hired to manage daily operations. Ambulance staffing will not be impacted by the municipal program. Lifeguards and supervisors are part-time personnel.

## **LEGAL**

As a preliminary matter, there is no legal requirement to provide lifeguard services on the beach, nor is there a requirement to utilize a contractual lifeguard service rather than City staff. The potential liability ramifications of providing these services by City employees instead of an independent contractor will vary based upon the specific facts of each claim. However, as a general matter, the City should be found statutorily immune from claims of simple negligence arising from the provision of lifeguard services on the beach. Moreover, we believe the City should be found to have common law immunity from liability for gross negligence because lifeguarding services are analogous to emergency medical services for which a City is absolutely immune from liability.

City employees could still be potentially liable for gross negligence claims depending on the factual circumstances of the claim. As a general matter, the City indemnifies its employees for liability arising out of and in the course of their employment with the City.

The City is self insured for such claims up to a threshold of \$2 million and then has a \$10 million excess liability policy. We are advised that the excess liability insurance premium would not change should VBEMS assume responsibility for these lifeguard services. Should the City Council so direct, general liability coverage for the self insured portion (\$2 million limit) could be obtained for approximately \$10,400 per year.

## **BUDGETARY**

The City's estimate to provide a Resort Lifeguard Service in 2012 is \$1,210,586, including start up costs. Future year costs and subsequent changes, if any required, will be handled through the normal City budget process. For example, if City employees are given a 1% pay raise, lifeguard salaries will go up 1%. VBLS has offered a bid of \$1,445,000 for the first year with automatic 2% annual escalations.

The City budget has \$311,724 allocated in the current fiscal year budget for Oceanfront Lifeguards. An additional \$50,167 would be required to fully fund the start up and operating costs of a municipal service this fiscal year if City Council so directs. There is adequate funding in the fy12 budget to support the first VBLS payment (15% of contract price = \$216,750) if City Council decides to retain the private contract for service.

## **PUBLIC INFORMATION**

The lifeguard RFP process is traditionally a high visibility subject, so media attention will be likely. This policy report will be publicly distributed and will be discussed in open session on January 24, 2012. Further public education can be conducted via VBTV programming and news contacts.

## **ALTERNATIVE COURSES OF ACTION**

**Alternative I:** Establish a municipal lifeguard service for the summer of 2012.

**Advantages:**

- Offers the lowest cost service, saving an estimated \$1.4M over five years.
- Allows maximum flexibility to modify services to meet emergent or evolving needs.
- City has complete command and control of lifeguard program.
- Provides ALS medical response.

**Disadvantages:**

- Increased City infrastructure and staff.
- One-time setup cost will require higher level of funding in first year of service.

**Alternative II:** Award the contract to VBLS.

**Advantages:**

- Continues a successful approach to guarding the beach.
- No additional City infrastructure is required over the long term.
- The private vendor may be financially responsible to citizens and visitors for negligence in situations where the City could have immunity if it provided the service internally.

**Disadvantages:**

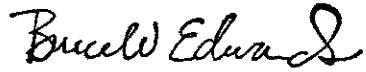
- Higher cost.
- City lacks complete command and control over lifeguards.
- Ability to meet emergent needs is limited.
- Provides only BLS medical response.

## **RECOMMENDATIONS**

It is recommended that the City Council adopt Alternative #1. This option provides comprehensive water rescue and BLS first response services at the lowest cost. A unified approach to public safety lifeguarding will be provided from Fort Story to Little Island Park. The municipal model will provide higher levels of service than offered by VBLS, including ALS level emergency care. In the coming years, the City will have flexibility to adjust service levels based on evolving needs and fiscal realities.

If the City Council elects to adopt Alternative #1, it would direct the City Manager to terminate the RFP process and expand the existing EMS municipal lifeguard service to cover the Oceanfront Beaches. Budget ordinances will be required to authorize funding transfers and create the associated positions for fy12. Specifically, this would involve transfer of \$311,724 currently appropriated for contractual services with the Department of EMS budget and transfer of \$50,167 from the General Fund Reserve for Contingencies to enable VBEMS to begin the hiring process for personnel and purchase equipment for service startup in May of 2012.

Submitted by:



1/20/2012

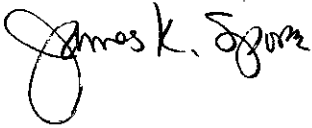
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Bruce W. Edwards, EMS Chief

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Date

Approved by:



1/20/2012

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James K. Spore, City Manager

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Date